

# **Dairy Industry Act**

## CHAPTER 24

### OF THE

### ACTS OF 2000

amended 2004, c. 4, s. 109

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### **An Act Respecting the Regulation of the Dairy Industry**

Short title

1 This Act may be cited as the Dairy Industry Act. 2000, c. 24, s. 1 .

Purpose of Act

2 The purpose of this Act is to provide a structure to regulate the dairy industry in the Province so that

(a) subject to the supervisory jurisdiction of the Natural Products Marketing Council, the production, transportation and sale of raw milk will be regulated by producers;

(b) the processing of raw milk and the pricing, packaging, distribution and sale of dairy products will be regulated by the Natural Products Marketing Council; and

(c) subject to the approval of the Minister, all national and inter-provincial agreements regarding total Provincial production quota and out-of-Province sales will be negotiated and regulated by the Natural Products Marketing Council and producers jointly. 2000, c. 24, s. 2 .

Interpretation

3 In this Act,

(a) "Board" means the Dairy Farmers of Nova Scotia;

(b) "Council" means the Natural Products Marketing Council established pursuant to the Natural Products Act;

(c) "Code" means the National Dairy Regulation and Code;

(d) "dairy animal" means a cow or such other species of animal as may be kept for the purpose of milking;

(e) "dairy plant" means premises, a building or a structure where milk is received and the processing of dairy products occurs;

(f) "dairy product" means milk or a product of milk that

- (i) contains no oil or fat other than that of milk,
- (ii) is prescribed by a standard set out in the Code, including foods made by modifying the standard in accordance with the Code, or
- (iii) contains a minimum of fifty per cent milk ingredients by weight;
- (g) "distributor" means a person who carries on the business of distributing fluid milk products, but does not include a jobber or storekeeper;
- (h) "fluid milk products" means the classes of milk and milk products designated as fluid milk products in the regulations;
- (i) "grader" means a person who holds a bulk milk grader certificate issued by the Minister for the grading of milk;
- (j) "inspector" means a person appointed as an inspector pursuant to this Act;
- (k) "jobber" means a person who purchases or receives milk from a licensed distributor for resale, but does not include a storekeeper or a person designated by the regulations;
- (l) "licence" means a licence required by this Act;
- (m) "licensing authority" means the designated authority authorized to issue a licence pursuant to this Act;
- (n) "marketing" means buying, selling or offering for sale and includes advertising, pricing, financing, researching, assembling, storing, packing, delivering and transporting in any manner by any person;
- (o) "milk" means a normal lacteal secretion obtained from the mammary gland of a dairy animal;
- (p) "Minister" means the Minister of Agriculture and Fisheries;
- (q) "payment agent" means a person designated to make payments to producers on behalf of the Board;
- (r) "processor" means a person producing, pasteurizing, manufacturing or packaging a dairy product;
- (s) "Processor Association" means the Nova Scotia Milk Processors' Division of the Atlantic Dairy Council;
- (t) "producer" means a person who sells raw milk that has been produced by a herd of dairy animals that the producer owns or controls;
- (u) "quota" means a portion of supply entitlement allotted to a producer in units as designated in the regulations;
- (v) "raw milk" means milk that has not been pasteurized;
- (w) "transporter" means a person transporting raw milk. 2000, c. 24, s. 3 .

#### Supervision and management

4 The Minister has the general supervision and management of this Act and the regulations. 2000, c. 24, s. 4 .

#### Continuation of Milk Producers Association

5 The society registered pursuant to the Societies Act known as the Nova Scotia Milk Producers Association is hereby continued as a body corporate to be known as the Dairy Farmers of Nova Scotia. 2000, c. 24, s. 5 .

#### Federal statutes and agreements

6 (1) The Council may, with the approval of the Minister, accept and exercise any authority or power granted to the Council pursuant to the Agricultural Products Marketing Act (Canada), the Canadian Dairy Commission Act or any other enactment of the Parliament of Canada.

(2) The Council and the Board may co-operate or enter into an agreement with a person, a marketing board or a marketing agency of Canada or of a province or a group of provinces of Canada and any of their respective agencies or commodity boards for the purpose of producing and marketing milk and dairy products.

(3) An agreement referred to in subsection (2), may provide for the pooling of revenue and may authorize the Council or the Board to perform, on behalf of the Government of Canada or the Canadian Dairy Commission, any function relating to inter-provincial or export trade in milk or a dairy product in respect of which the Council or the Board, as the case may be, may exercise powers in intra-provincial trade. 2000, c. 24, s. 6.

#### Requirement for licence

7 (1) No person shall, directly or indirectly, engage in or carry on the business of producing, transporting, processing, distributing or marketing dairy products unless the person is the holder of a licence issued by a licensing authority.

(2) A licence issued pursuant to subsection (1) may be subject to such terms and conditions as the licensing authority considers appropriate.

(3) Where the licensing authority is not satisfied that an applicant for a licence is qualified by experience, financial responsibility and equipment to properly conduct the proposed business and that the issuance of the licence is in the public interest, the licensing authority may refuse to grant a licence to the applicant. 2000, c. 24, s. 7 .

#### Powers of Council

8 The Council may

- (a) investigate the cost of producing, processing, distributing and transporting any milk or dairy product;
- (b) investigate a price, price spread, trade practice, method of financing, management practice, grading policy or any policy or other matter relating to the marketing, production or processing of milk or dairy products;
- (c) provide for the conducting of a milk utilization audit;
- (d) designate fluid milk products for the purpose of this Act;
- (e) designate dairy animals for the purpose of this Act;
- (f) investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute arising under this Act;
- (g) require the Board to file with the Council regulations, orders or by-laws made by the Board pursuant to this Act;

(h) do such acts and make such orders and directives as are necessary to enforce this Act and the regulations. 2000, c. 24, s. 8 .

#### Regulations

9 The Council may make regulations

(a) fixing and allotting quota for marketing or production;

(b) prescribing the price structure for raw milk and any component of milk and the basis of the calculation of the price structure having regard to any or all of the following circumstances:

(i) the prevailing market price of milk,

(ii) the conditions of production,

(iii) the manner of delivery,

(iv) the cost of handling and delivering milk,

(v) any other circumstance that has an effect on the price of milk;

(c) prescribing

(i) the price or prices or the maximum or minimum prices for fluid milk products,

(ii) the quantities or containers or types of containers in which fluid milk products may be sold,

(iii) the price or prices or the maximum or minimum prices for fluid milk products when sold or offered for sale in quantities or containers as prescribed;

(d) prohibiting the sale of fluid milk products

(i) at a price other than the price prescribed by the Council or at a price higher than the maximum price or lower than the minimum price prescribed by the Council,

(ii) in quantities or containers other than those prescribed by the Council,

(iii) at prices other than prices prescribed by the Council for fluid milk products when sold in a quantity or container prescribed by the Council or at prices higher than the maximum or lower than the minimum prices prescribed by the Council for sales in quantities or containers prescribed by the Council;

(e) prohibiting or regulating the manufacture, processing, distribution or sale of reconstituted milk;

(f) providing for the registration and licensing of producers, processors, distributors or any person marketing milk or dairy products;

(g) prescribing the grounds for the refusal of the registration and licensing of a producer, processor, distributor or marketer of milk or dairy products;

(h) specifying the information required to be submitted with an application for a licence;

(i) specifying the criteria and the terms and conditions, including the expiry date, if any, upon which a licence may be obtained and the fees payable for a licence and the collection of those fees;

(j) requiring applicants for licences and holders of licences to furnish from time to time proof of financial responsibility satisfactory to the licensing authority and requiring a bond or other security from applicants and holders of licences in the amount determined by the licensing authority and providing for the administration, forfeiture and disposition of any money or securities so furnished;

(k) classifying producers, processors, distributors or any persons engaged in the dairy industry;

(l) respecting the grading of milk, including the powers and duties of a grader;

(m) providing for the appointment of persons to inspect the records, equipment and premises of persons engaged in the producing, processing or marketing of milk or dairy products;

(n) prescribing the records and reports to be kept or made by a person, including a producer, transporter, processor or distributor;

(o) requiring persons who produce, transport, distribute, process, keep for sale, market or sell milk to furnish to the Council such information as the Council may from time to time require;

(p) prohibiting

(i) a producer from discontinuing the sale of milk to the Board,

(ii) the Board from discontinuing the purchase of milk from a producer,

(iii) a distributor or processor from discontinuing the purchase of milk from the Board,

(iv) the Board from discontinuing the sale of milk to a distributor or processor,

without the approval of the Council, except in such circumstances as may be prescribed by the regulations;

(q) prescribing the terms and conditions upon which milk may be produced, received, handled, transported, stored, delivered, supplied, processed and marketed;

(r) prescribing the categories and classification of milk;

(s) prescribing the methodology for milk component testing;

(t) approving the allocation of raw milk for processing;

(u) fixing, imposing upon and collecting fees, levies or charges from persons engaged in the production of milk and designating to whom the fees, levies or charges shall be paid;

(v) fixing and collecting fees or charges to be paid by a producer, transporter, processor or distributor to the Council for administration, arbitration or auditing functions;

(w) authorizing the payment of expenses from fees, levies or charges imposed pursuant to clause (u);

(x) authorizing the fixing of prompt payment discounts, delayed payment penalties and interest on licence fees and service charges owing by any person engaged in the producing, marketing or processing of milk or dairy products;

(y) authorizing a licensing authority to use licence fees and other money payable for the purpose of paying the expenses of the licensing authority and for carrying out and enforcing this Act and the regulations;

(z) authorizing the establishment of a fund with respect to the payment of any money required pursuant to clause (y);

(aa) providing for the making of grants or other like payments to any person or association or body of persons;

(ab) requiring that no charges, costs or expenses relating to the producing or marketing of milk shall be made, other than such charges, costs or expenses as provided for in this Act or the regulations;

(ac) exempting a person or class of persons engaged in the production or marketing of milk or a dairy product or a class, variety or grade of dairy product from this Act or the regulations;

(ad) providing for the establishment and terms of reference of advisory committees;

(ae) providing for the transfer of information necessary to carry out the purpose of this Act and the regulations;

(af) respecting the powers and duties of an inspector;

(ag) respecting penalties;

(ah) subject to subsection 24(1), respecting appeals;

(ai) defining any word or expression used but not defined in the regulations;

(aj) deemed necessary or advisable to carry out effectively the intent and purpose of this Act. 2000, c. 24, s. 9 .

#### Transfer or sale of quotas

10 Subject to the approval of the Governor in Council, the Council may make regulations regulating or controlling the transfer or sale of quota outside of the Province. 2000, c. 24, s. 10.

#### Regulations by Council

11 The Council, after consulting with the Board and the Processor Association and with the approval of the Minister, may make regulations not inconsistent with the Health Protection Act or regulations made pursuant to that Act

(a) relating to the quality, kind, storage, production, manufacture, processing, transportation and marketing of milk or dairy products;

(b) providing for the inspection and control of premises at which the storage or production of milk or dairy products is carried on;

(c) providing standards for sampling;

(d) providing for the inspection and regulation of vehicles of any kind by which milk or dairy products are transported;

(e) respecting the grading and inspection of milk;

(f) adopting regulations or standards under the Code as regulations under this Act. 2000, c. 24, s. 11; 2004, c. 4, s. 109.

#### Regulations Act

12 The exercise by the Council of the authority contained in Sections 9, 10 and 11 is regulations within the meaning of the Regulations Act. 2000, c. 24, s. 12 .

#### Delegation of powers

13 (1) The Council may delegate to the Board such of its powers as the Council deems appropriate to provide a flexible, efficient structure to regulate the dairy industry.

(2) Notwithstanding subsection (1), the Council may not delegate any of the powers referred to in clauses 8(c) or (f), clauses 9(c), (d) or (e), subclauses 9(p)(iii) or (iv) or Sections 10 and 11.

(3) Notwithstanding subsection (1), the Council shall not delegate a power, including a regulation-making power, that primarily relates to a processor, distributor or retailer function.

(4) On giving the notice that the Council considers reasonable in the circumstances, the Council may, by regulation, revoke a delegation made pursuant to subsection (1) where

(a) the Board has failed to comply with this Act or the regulations or any of the powers delegated to the Board; or

(b) the Council considers it advisable in the public interest to revoke the delegation. 2000, c. 24, s. 13.

#### Powers that may be delegated

14 (1) The Council may delegate the following powers to the Board, including the power to make regulations:

(a) requiring all persons engaged in the production of milk to be licensed;

(b) requiring all persons engaged in the production of milk to meet quality standards;

(c) prescribing the price to be paid by a distributor or processor for milk or milk components;

(d) designating payment agents authorized to act on behalf of the Board to pay producers for milk;

(e) providing for the regulation of the supply of milk by producers to processors, including the marketing or production of milk on a quota basis, and for that purpose

(i) fixing and allotting quota for marketing or production,

(ii) refusing to fix and allot quota to persons;

(iii) subject to Section 10, transferring quota among producers supplying milk and setting the terms and conditions on which the transfer may take place,

(iv) cancelling, reducing or refusing to increase the quota fixed and allotted to any person,

(v) prohibiting any person to whom a quota has not been fixed and allotted from marketing and producing milk,

- (vi) prohibiting any person to whom a licence has been issued and a quota allotted from marketing or producing milk in excess of the quota,
- (vii) prohibiting the purchase, sale or transfer of quota by any person,
- (viii) authorizing the assignment of quota to a creditor as security for money loaned or advanced,
- (ix) subject to Section 10, providing for the purchase, sale or transfer of quota through a quota exchange,
- (x) providing for the purchase and sale of quota by the Board,
- (xi) providing for the retention of a percentage of quotas as an assessment on each transfer of quota;
- (f) providing for the establishing and administering of a pooling program whereby all producers receive a comparable price for milk that is adjusted for any geographic pricing considerations;
- (g) prescribing the information the Board or its payment agent shall supply in a milk statement to each producer;
- (h) providing for the purchasing of raw milk from producers and the selling of the raw milk to processors;
- (i) providing for the administering of the quality and operating standards with respect to the production and storage of milk on the farm.

(2) The exercise by the Board of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act. 2000, c. 24, s. 14 .

#### Regulations by Board

15 (1) The Board, with the approval of the Council, may make regulations

- (a) establishing penalties to be imposed on a producer with respect to licensing, production and quality standards for milk on the farm;
- (b) prescribing the criteria, rates or charges, equalization payments, other fee mechanisms or charges and method of payment for bulk haulage;
- (c) prescribing the powers and duties of an advisory committee to the Board;
- (d) requiring the filing of returns and reports;
- (e) prescribing and defining the rights, privileges, obligations and liabilities of a transporter, producer or processor in relation to the storage, transportation and delivery of milk;
- (f) requiring, by order, persons designated by the Board who are engaged in the marketing or the production of a dairy product or any persons who are members of class of persons designated by the Board and who are engaged in the marketing or production of a dairy product to deduct from any amount payable by that person to any other person engaged in the production or marketing of a dairy product any amount payable to the Board by such other person by way of a licence fee, levy or charge provided for the marketing of milk that the Board is authorized to implement and to remit all amounts so deducted;
- (g) prescribing fees, levies or charges to be collected by the Board from a producer;

- (h) prescribing by-laws for the administration and structure of the Board;
- (i) prescribing the procedures for the collection, use, release and protection of personal or confidential information by the Board in carrying out its duties pursuant to this Act and the regulations;
- (j) authorizing rehearings of decisions of the Board and prescribing the process for such hearings;
- (k) requiring all persons engaged in the production of milk to register with the Board the name of the person and to keep and furnish the information required by the Board.

(2) The exercise by the Board of the authority contained in subsection (1) is regulations within the meaning the Regulations Act. 2000, c. 24, s. 15 .

#### Public Inquiries Act powers

16 When exercising powers pursuant to this Act, each member of the Council or the Board has the powers, privileges and immunities of a commissioner appointed pursuant to the Public Inquiries Act. 2000, c. 24, s. 16 .

#### Immunity from liability

17 No member of the Council or the Board is liable for any actions or decisions made in good faith in carrying out duties or responsibilities as a member of the Council or the Board. 2000, c. 24, s. 17 .

#### Duty to consult

18 The Council shall consult with the Processor Association when dealing with issues of importance to processors and when requested to do so by the Processor Association. 2000, c. 24, s. 18 .

#### Licensing authorities

19 The Minister may appoint licensing authorities for the purpose of this Act. 2000, c. 24, s. 19.

#### Producers, distributors and processors

20 (1) A person who is a producer and a distributor is entitled in that person's respective capacities as a producer and as a distributor to all the rights and privileges and is subject to all the duties and obligations of a producer and of a distributor.

(2) A person who is a producer and a distributor is deemed to have received in the person's capacity as a distributor, from that person, in that person's capacity as a producer, the milk produced by that person that that person distributes and to have contracted in that capacity with himself in the person's capacity as a producer for the marketing of the milk, upon the condition that the regulations and orders made pursuant to this Act apply.

(3) A producer or group of two or more producers who, directly or through a corporation of which the producer or producers is or are members or shareholders, or through an agent, arranges for the distributing on the account of the producer or producers by a distributor of any milk produced by the producer or producers, is deemed to be a producer and distributor or producers and distributors for the purpose of subsections (1) and (2).

(4) A person who is producer and a processor is entitled in that person's respective capacities as a producer and as a processor to all the rights and privileges and is subject to all the duties and obligations of a producer and of a processor.

(5) A person who is a producer and a processor is deemed to have received, in the person's capacity as a processor from that person, in the person's capacity as a producer, the milk produced by that person that that person processes and to have contracted in that capacity with himself or herself in the person's

capacity as a producer for the marketing of the milk, upon the condition that the regulations and orders made pursuant to this Act apply.

(6) A producer or group of two or more producers who directly or through a corporation of which the producer or producers is or are members or shareholders, or through an agent, arrange for the processing, on the account of the producer or producers, by a processor of any milk produced by the producer or producers, is deemed to be a producer and processor or producers and processors for the purpose of subsections (4) and (5). 2000, c. 24, s. 20.

#### Inspectors

21 (1) The Minister, the Council or the Board may appoint inspectors to carry out their respective functions under this Act and the regulations.

(2) An inspector may

(a) enter and inspect any premises or conveyance used for the producing, processing or marketing of milk or dairy products and inspect anything relevant to the inspection found in the premise or conveyance;

(b) stop any conveyance that the inspector believes may contain any milk or dairy product and inspect the conveyance and any milk or dairy product found in it;

(c) obtain a sample of any milk or dairy product at the expense of the owner for the purpose of making an inspection of it;

(d) require any person who has the custody or control of any books, records or documents of a person engaged in the producing, processing or marketing of milk or dairy products to produce the books, records or documents or to furnish copies of or extracts from them.

(3) Every person when requested to do so by an inspector shall, in respect of the milk or dairy product, produce such books and records or supply extracts therefrom and permit the inspection of the premises.

(4) No person shall hinder or obstruct an inspector in the performance of the inspector's duties, refuse to permit the inspector to carry out such duties, refuse to furnish the inspector with information or furnish the inspector with false information.

(5) The production by any person of a certificate of appointment by the Minister, the Council or the Board to inspect the books, records, documents, equipment and premises of a person engaged in the producing, marketing or processing of a dairy product purporting to be signed by the Minister or the chair or the secretary of the Council or the Board, shall be accepted by any person engaged in the producing or marketing of the dairy product as prima facie proof of such appointment. 2000, c. 24, s. 21.

#### Power to seize

22 (1) When an inspector believes on reasonable grounds that this Act or the regulations or any order or direction of the Council or the Board has been violated, the inspector may seize the dairy products and other things by means of or in relation to which the inspector reasonably believes a violation was committed.

(2) Dairy products and other things seized pursuant to subsection (1) shall not be detained after

(a) this Act, the regulations or an order or direction, as the case may be, has, in the opinion of the inspector, been complied with; or

(b) the expiration of ninety days from the day of seizure,

unless before that time proceedings have been instituted in respect of the violation, in which case the dairy products and other things may be detained until the proceedings are finally concluded.

(3) Where a person has been convicted of a violation of this Act or the regulations or an order or direction of the Council or the Board, every dairy product or other thing by means of or in relation to which the offense [offence] was committed is, upon conviction, in addition to any penalty imposed, forfeited to Her Majesty in right of the Province if such forfeiture is directed by the court.

(4) Any dairy product or other thing detained pursuant to this Section is at all times at the risk and expense of the owner, but the inspector shall immediately notify the owner or person having possession of the product by personal service or registered mail that the product is being detained in storage or otherwise, as the case may be.

(5) The Council, with the approval of the Governor in Council, may make regulations

(a) respecting the detention of dairy products or other things seized pursuant to this Section and the preserving or safe guarding of those products or things;

(b) respecting the disposition of dairy products or other things forfeited pursuant to this Section.

(6) The exercise by the Council of the authority contained in subsection (5) is regulations within the meaning of the Regulations Act, 2000, c. 24, s. 22 .

**Proof that product is regulated**

23 In a prosecution under this Act or the regulations, the fact that the person charged had a dairy product in that person's possession is prima facie proof that the dairy product is regulated pursuant to this Act, 2000, c. 24, s. 23 .

**Appeal**

24 (1) A person who is aggrieved by a decision or order of the Board may appeal to the Council in the time and in the manner prescribed by the Council.

(2) A decision of the Council with respect to an appeal pursuant to subsection (1) is final and is not subject to appeal.

(3) A person who is aggrieved by a decision or order of the Council, other than a decision with respect to an appeal referred to in subsection (1), may appeal to the Supreme Court of Nova Scotia in the time and in the manner determined by the court.

(4) A decision of the court with respect to an appeal pursuant to subsection (3) is final and is not subject to appeal. 2000, c. 24, s. 24 .

**Limitation of right to appeal**

25 Notwithstanding subsection 24(1), where the authority referred to in clause 9(b) is delegated to the Board, a decision of the Board made pursuant to that delegation shall be ratified by the Council and is not subject to appeal. 2000, c. 24, s. 25.

**Binding arbitration**

26 (1) Subsection 24(1) does not apply to the parties to a decision of the Board following a recommendation from an advisory committee which recommendation resulted from a process of binding arbitration.

(2) Binding arbitration shall not be used by an advisory committee of the Board when making a recommendation to the Board with respect to a power referred to in clause 9(b) that has been delegated to the Board. 2000, c. 24, s. 26 .

#### Offence and penalty

27 A person who violates this Act or the regulations or an order or direction of the Minister, the Council or the Board, is guilty of an offence [offence] and liable on summary conviction to the penalty provided for in the Summary Proceedings Act. 2000, c. 24, s. 27 .

#### Regulations

28 (1) The Governor in Council may make regulations

(a) defining any word or expression used but not defined in this Act;

(b) deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act. 2000, c. 24, s. 28 .

#### Natural Products Act amended

29 amendment of the Natural Products Act. 2000, c. 24, s. 29 .

#### Dairy Commission Act repealed

30 Chapter 117 of Revised Statutes, 1989, the Dairy Commission Act, is repealed. 2000, c. 24, s. 30 .

#### Proclamation

31 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2000, c. 24, s. 31 .

Proclaimed - March 23, 2001

In force - April 1, 2001

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